

AMENDED IN ASSEMBLY MAY 11, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1268

Introduced by Assembly Members Gaines and Nava

February 27, 2009

An act to amend Sections 110, *1210, 1211, 1212*, and 1583 of, to add Sections 220, 221, 222, 223, 230.5, 236, 250.5, 291, 292, 293, 352, 353, 354, 355, ~~and 356~~ *356, 511, 770, and 3828* to, to add Article 3.5 (commencing with Section 240), Article 7 (commencing with Section 295), Article 8 (commencing with Section 305), and Article 9 (commencing with Section 335) to Chapter 2 of Division 1 of, to repeal Sections 100, 101, 107.5, 116, 117, *118*, 684, 1817, 1818, 1819, 1819.5, 1820, 1821, 1822, 1824, 1825, 1880, 1880.5, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1910, 1911, 1911.5, 1912, 1913, 1913.5, 1951, 1952, 14200, 14200.1, 14200.2, 14201, 14204, 14205, 14208, 14209, 14253, 14255, 14257, 34100, 34100.5, 34101, 34102, 34103, 34104, 34105, 34106, 34107, 34108, 34109, 34110, 34111, 34112, and 34113 of, to repeal Chapter 17 (commencing with Section 3100) of Division 1 of, to repeal Article 3 (commencing with Section 14300) and Article 5 (commencing with Section 14380) of Chapter 3 of Division 5 of, and to repeal Chapter 11 (commencing with Section 31700) of Division 15 of, the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1268, as amended, Gaines. Financial institutions.

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of state-chartered banks and credit unions, money transmitters, persons engaged in the business of issuing travelers checks, business and industrial development corporations, and corporations engaging in the business of selling, in this state, payment instruments issued by it. Each of the laws regulating these licensees establishes various enforcement provisions for violations of those laws.

This bill would repeal those enforcement provisions. The bill would recast, in one body of law, the enforcement provisions applicable to those licensees *and would also recast various other provisions applicable to those licensees*. The bill would recast provisions establishing the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The bill would recast provisions making it a crime for the deputy commissioner to fail to report to the commissioner information regarding the insolvency or unsafe condition of a licensee, if the deputy commissioner has knowledge of those facts. The bill would recast provisions establishing the Credit Union Advisory Committee. The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 100 of the Financial Code is repealed.
- 2 SEC. 2. Section 101 of the Financial Code is repealed.
- 3 SEC. 3. Section 107.5 of the Financial Code is repealed.
- 4 SEC. 4. Section 110 of the Financial Code is amended to read:
- 5 110. "Office" includes head office, branch office, and any other
- 6 authorized place of business of a licensee.
- 7 "Head office" means the principal place of business of a licensee.
- 8 SEC. 5. Section 116 of the Financial Code is repealed.
- 9 SEC. 6. Section 117 of the Financial Code is repealed.
- 10 SEC. 7. *Section 118 of the Financial Code is repealed.*
- 11 ~~118. (a) All references in this division and in Division 1~~
- 12 ~~(commencing with Section 100), Title 1 of the Corporations Code~~
- 13 ~~to financial statements, balance sheets, income statements and~~
- 14 ~~statements of changes in financial position of a bank and all~~
- 15 ~~references to assets, liabilities, earnings, retained earnings,~~
- 16 ~~shareholders' equity, and similar accounting items of a bank mean~~

1 such financial statements or such items prepared or determined in
2 conformity with generally accepted accounting principles then
3 applicable in the United States, fairly presenting in conformity
4 with generally accepted accounting principles accepted in the
5 United States the matters which they purport to present, subject
6 to any specific accounting treatment required by any provision of
7 Division 1 (commencing with Section 100), Title 1 of the
8 Corporations Code, of this division, or of any regulation or order
9 issued under this division.

10 (b) The commissioner may, by regulation or order, require that
11 any financial statement or accounting item of a bank be prepared
12 or determined in a manner other than in conformity with generally
13 accepted accounting principles accepted in the United States if the
14 commissioner finds that such other manner is necessary or
15 appropriate to carry out the purposes or provisions of this division.

16 ~~SEC. 7:~~

17 *SEC. 8.* Section 220 is added to the Financial Code, to read:

18 220. The powers of supervision and examination of all licensees
19 are vested in the commissioner.

20 ~~SEC. 8:~~

21 *SEC. 9.* Section 221 is added to the Financial Code, to read:

22 221. The commissioner may promulgate or waive such rules
23 and regulations as may be reasonable or necessary to carry out his
24 or her duties and responsibilities.

25 ~~SEC. 9:~~

26 *SEC. 10.* Section 222 is added to the Financial Code, to read:

27 222. (a) The commissioner, whenever in his or her opinion
28 such action is necessary or appropriate to carry out his or her duties,
29 may call a meeting of the board of directors of a licensee.

30 (b) A meeting of the board of a licensee called by the
31 commissioner shall be held upon four days' notice by first class
32 mail or 24 hours' notice delivered personally or by telephone. The
33 notice shall be given by the commissioner or, if the commissioner
34 so orders, by an officer of the licensee.

35 (c) A meeting of the board of a licensee called by the
36 commissioner shall be held at a place within this state as may be
37 designated by the commissioner and specified in the notice of the
38 meeting.

39 (d) The expenses of a meeting of the board of a licensee called
40 by the commissioner shall be paid by the licensee.

1 ~~SEC. 10.~~

2 *SEC. 11.* Section 223 is added to the Financial Code, to read:

3 223. The commissioner may, at any time, require a licensee to
4 write down any asset held by the licensee to a valuation that will
5 represent the asset's then fair market value.

6 ~~SEC. 11.~~

7 *SEC. 12.* Section 230.5 is added to the Financial Code, to read:

8 230.5. The Chief Officer of the Division of Credit Unions is
9 the Deputy Commissioner of Financial Institutions for the Division
10 of Credit Unions. The Deputy Commissioner of Financial
11 Institutions for the Division of Credit Unions shall administer the
12 laws of this state relating to credit unions or the credit union
13 business under the direction of the commissioner. The Deputy
14 Commissioner of Financial Institutions for the Division of Credit
15 Unions shall be appointed by the Governor and shall hold office
16 at the pleasure of the Governor. The Deputy Commissioner of
17 Financial Institutions shall receive an annual salary as fixed by the
18 Governor.

19 ~~SEC. 12.~~

20 *SEC. 13.* Section 236 is added to the Financial Code, to read:

21 236. If a deputy commissioner or any examiner has knowledge
22 of the insolvency or unsafe condition of any licensee and willfully
23 fails to report that fact to the commissioner in writing ~~over his or~~
24 ~~her signature~~, he or she is guilty of a felony.

25 ~~SEC. 13.~~

26 *SEC. 14.* Article 3.5 (commencing with Section 240) is added
27 to Chapter 2 of Division 1 of the Financial Code, to read:

28

29 Article 3.5. Credit Union Advisory Committee

30

31 240. There is in the department a Credit Union Advisory
32 Committee.

33 241. The Credit Union Advisory Committee shall advise the
34 commissioner and the Deputy Commissioner of Financial
35 Institutions for the Division of Credit Unions on matters relating
36 to credit unions or the credit union business.

37 242. (a) The Credit Union Advisory Committee shall consist
38 of seven members.

1 (b) The members of the Credit Union Advisory Committee shall
2 be appointed by the Secretary of Business, Transportation and
3 Housing.

4 (c) The term of office of a member of the Credit Union Advisory
5 Committee shall be two years. However, a member may be
6 reappointed.

7 (d) Membership on the Credit Union Advisory Committee is
8 voluntary. No person is required to accept an appointment to the
9 Credit Union Advisory Committee, and any member may resign
10 by filing a resignation with the commissioner.

11 (e) No member of the Credit Union Advisory Committee shall
12 receive any compensation, reimbursement for expenses, or other
13 payment for service on the Credit Union Advisory Committee.

14 243. The Credit Union Advisory Committee shall meet at least
15 once each calendar quarter.

16 244. The commissioner may, by order or regulation, prescribe
17 rules governing the Credit Union Advisory Committee and its
18 members, including such matters as meetings, quorum, and actions.

19 ~~SEC. 14.~~

20 *SEC. 15.* Section 250.5 is added to the Financial Code, to read:

21 250.5. There is in the Department of Financial Institutions, the
22 Division of Credit Unions. The Division of Credit Unions has
23 charge of the execution of the laws of this state relating to credit
24 unions and to the credit union business.

25 ~~SEC. 15.~~

26 *SEC. 16.* Section 291 is added to the Financial Code, to read:

27 291. Any debt due a licensee on which interest is past due and
28 unpaid for the period of one year shall be charged off, unless *it the*
29 *debt* is well secured or is in process of collection.

30 ~~SEC. 16.~~

31 *SEC. 17.* Section 292 is added to the Financial Code, to read:

32 292. Any person that provides services to any licensee, at the
33 request of the commissioner, shall submit to an examination by
34 the commissioner. Should the commissioner deem it necessary or
35 desirable that an examination be made of a person, the examination
36 shall be made at the expense of the person examined. If the person
37 refuses to permit an examination to be made, the commissioner
38 may order every licensee receiving services from that person to
39 discontinue receiving those services or otherwise conducting

1 business with that person, and the licensees shall comply with that
2 order.

3 *SEC. 18. Section 293 is added to the Financial Code, to read:*

4 *293. (a) All references in this code and the Corporations Code*
5 *to financial statements, balances sheets, income statements, and*
6 *statements of changes in financial position of a licensee, and all*
7 *references to assets, liabilities, earnings, retained earnings,*
8 *shareholders' equity, net worth, and similar accounting items of*
9 *a licensee, mean those financial statements or those items prepared*
10 *or determined in conformity with generally accepted accounting*
11 *principles then applicable in the United States, fairly presenting*
12 *in conformity with generally accepted accounting principles*
13 *accepted in the United States the matters which they purport to*
14 *present, subject to any specific accounting treatment required by*
15 *any applicable provision of the Corporations Code, this code, or*
16 *any regulation, order issued by the commissioner, or agreement*
17 *entered into by the commissioner and a licensee.*

18 *(b) The commissioner may, by regulation or order, require that*
19 *any financial statement or accounting item of a licensee be*
20 *prepared or determined in a manner other than in conformity with*
21 *generally accepted accounting principles accepted in the United*
22 *States if the commissioner finds that such other manner is*
23 *necessary or appropriate to carry out the purposes or provisions*
24 *of this code.*

25 ~~SEC. 17.~~

26 *SEC. 19. Article 7 (commencing with Section 295) is added*
27 *to Chapter 2 of Division 1 of the Financial Code, to read:*

28
29 Article 7. Enforcement
30

31 295. In this article:

32 (a) "Appropriate licensee business" means the business that a
33 licensee may conduct in accordance with the *charter or* license
34 that the commissioner has issued to that licensee.

35 (b) "Customer" means a depositor of a bank, a member of a
36 credit union, or a customer of any other licensee.

37 (c) "Holding company" shall have the meaning set forth in
38 Section 3700.

39 (d) "Officer of a subject institution" means any director, officer,
40 official, or employee of the subject institution.

1 (e) “Person” means a subject institution or a subject person.

2 ~~(e)~~

3 (f) “Subject institution” means any of the following:

4 (1) Licensee.

5 (2) Subsidiary of a licensee.

6 (3) Foreign (other state) or foreign (other nation) bank or credit
7 union that maintains an office in this state, with respect to any such
8 office other than a national bank or federal credit union.

9 (4) Any other person lawfully conducting the business of a bank
10 or credit union in this state other than a national bank or federal
11 credit union.

12 ~~(f)~~

13 (g) “Subject person,” when used with respect to a subject
14 institution, means any of the following:

15 (1) Director, officer, employee, or agent of the subject
16 institution.

17 (2) Member, consultant, joint venture partner, or other person
18 that participates in the affairs of a subject institution.

19 (3) Independent contractor, including any attorney, appraiser,
20 or accountant, who knowingly or recklessly participates in any of
21 the following acts if the act caused or is likely to cause more than
22 a minimal financial loss to, or a significant adverse effect on, the
23 subject institution:

24 (A) A violation of any applicable law, regulation, or order.

25 (B) A breach of fiduciary duty.

26 (C) An unsafe or unsound act.

27 ~~(g)~~

28 (h) “Violation” includes any act performed, alone or with other
29 persons, for or toward causing, bringing about, participating in,
30 counseling, aiding, or abetting a violation of any applicable statute,
31 regulation, provision of a written order issued by the commissioner,
32 or provision of a written ~~operating agreement signed by agreement~~
33 *made between* the commissioner and a subject institution or subject
34 person.

35 295.1. Any *subject* person who is entitled to a hearing pursuant
36 to this article may waive that right at any time. A waiver under
37 this section shall relieve the commissioner from having to issue a
38 formal notice of hearing that would otherwise be required by this
39 article.

1 295.2. (a) Within 30 days after an order is issued pursuant to
2 Section 297, 298.1, 299, 300.1, or 301.1, or subdivision (c) of
3 Section 300.2, the person to whom the order is issued may file
4 with the commissioner an application for a hearing on the order.

5 (b) If the commissioner fails to commence the hearing within
6 15 business days after the application is filed with the
7 commissioner or within any longer period to which the person
8 *subject to the order* consents, the order shall be deemed rescinded.

9 (c) Within 30 days after the hearing, or within any longer period
10 to which the person consents, the commissioner shall affirm,
11 modify, or rescind the order. If the commissioner fails to affirm,
12 modify, or rescind the order within that time limit, the order shall
13 be deemed rescinded.

14 (d) The right to petition for judicial review of the order shall
15 not be affected by the failure of the person *subject to the order* to
16 apply to the commissioner for a hearing on the order pursuant to
17 subdivision (a).

18 295.3. ~~An~~ *In addition to any other action or requirement the*
19 *commissioner deems necessary or advisable, an order issued*
20 *pursuant to Section 297.1, 298, 298.1, 299, 300, 300.1, or 300.2*
21 *may include any of the following provisions:*

22 ~~(a) Require the subject institution, subject person, or holding~~
23 ~~company to take affirmative action to correct any condition~~
24 ~~resulting from the action or violation, including:~~ *require the person*
25 *subject to the order to do any of the following:*

26 ~~(1)~~

27 (a) Make restitution or provide reimbursement, indemnification,
28 or guarantee against loss, if the subject institution, subject person,
29 or holding company was unjustly enriched by the action or
30 violation or if the action or violation involved a reckless disregard
31 for any provision of this division, of any regulation or order issued
32 under this division, of any other applicable law, or of any
33 agreement with the commissioner.

34 ~~(2)~~

35 (b) Restrict the growth of the subject institution.

36 ~~(3)~~

37 (c) Dispose of any loan or other asset ~~involved~~.

38 ~~(4)~~

39 (d) Correct violations of law.

40 ~~(5)~~

1 (e) Employ qualified officers or employees, who may be subject
2 to approval of the commissioner.

3 ~~(6) Take any other action that the commissioner deems necessary~~
4 ~~or advisable.~~

5 (b)

6 (f) Limit the activities or functions of the subject institution,
7 subject person, or holding company.

8 295.4. If the commissioner takes possession of a subject
9 institution without a prior notice or hearing, or takes action against
10 a subject person without prior notice or hearing, the commissioner
11 shall, upon taking possession or taking that action, concurrently
12 provide to the subject institution or subject person a written order.
13 The order shall set forth the condition or conditions of the subject
14 institution or action or actions of the subject person that constitute
15 the basis or bases for the commissioner's action. In any case where
16 the commissioner takes possession of a subject institution, the
17 commissioner shall establish, by clear evidence, the basis for his
18 or her action.

19 296. (a) The commissioner may bring an action in the name
20 of the people of this state in superior court to enjoin any violation
21 of, to enforce compliance with, or to collect any penalty or other
22 liability imposed under, any law subject to the jurisdiction of the
23 commissioner. The commissioner may bring an action in the name
24 of the people of this state in superior court to enjoin any violation
25 of, to enforce compliance with, or to collect any penalty or other
26 liability imposed under, any regulation promulgated under the
27 power of the commissioner. The commissioner may bring an action
28 in the name of the people of this state in superior court to enjoin
29 any violation of, to enforce compliance with, or to collect any
30 penalty or other liability imposed under, any (1) agreement entered
31 into with the commissioner or (2) order issued by the
32 commissioner. Upon a proper showing, a permanent or preliminary
33 injunction, restraining order, or writ of mandate shall be granted,
34 and a monitor, receiver, conservator, or other designated fiduciary
35 or officer of the court may be appointed for the defendant or the
36 defendant's assets, or other relief may be granted as appropriate.

37 (b) A receiver, monitor, conservator, or other designated
38 fiduciary officer of the court appointed by the court pursuant to
39 this section may, with the approval of the court, exercise all of the
40 powers of the defendant's officers, directors, partners, trustees, or

1 persons who exercise similar powers and perform similar duties.
2 No action at law or in equity may be maintained by any party
3 against the commissioner or a receiver, monitor, conservator, or
4 other designated fiduciary or officer of the court by reason of his
5 or her exercise of those powers or performing these duties pursuant
6 to the order of, or with the approval of, the court.

7 (c) If the commissioner finds that it is in the public interest, the
8 commissioner may include in any action authorized by subdivision
9 (a) a claim for ancillary relief, including a claim for restitution,
10 disgorgement, or damages on behalf of the person injured by the
11 act or practice constituting the subject matter of the action, and
12 the court shall have jurisdiction to award ancillary relief.

13 (d) Neither the provision of subdivision (a) that authorizes the
14 appointment of a monitor, receiver, conservator, or other designated
15 fiduciary or officer of the court nor any provision of subdivision
16 (b) or (c) applies to any of the following:

17 (1) A licensee that is authorized by the commissioner to transact
18 appropriate licensee business.

19 (2) A foreign (other state) or foreign (other nation) bank or
20 credit union that maintains an office in this state in accordance
21 with federal law, the law of this state, and the law of the bank or
22 credit union's domicile.

23 (e) The provisions of this section that authorize the
24 commissioner to bring actions and seek relief are not intended to,
25 and do not, affect any right that any other person may have to bring
26 the same or similar actions or to seek the same or similar relief.

27 297. If the commissioner finds that a person has conducted, or
28 that there is reasonable cause to believe that a person is about to
29 conduct, business that requires a license issued by the
30 commissioner and that person has not been issued the required
31 license, the commissioner may, without any prior notice or hearing,
32 order the person to cease and desist from conducting any
33 unauthorized business unless and until the person is issued a license
34 to engage in appropriate licensee business.

35 298. If, after notice and ~~a hearing~~ *an opportunity to be heard*,
36 the commissioner finds any of the factors set forth in subdivision
37 (a) or (b) with respect to any subject institution, subject person, or
38 any holding company, the commissioner may order the subject
39 institution, subject person, or holding company to cease and desist
40 from the act or violation:

1 (a) That the subject institution, subject person, or holding
2 company has engaged or participated, is engaging or participating,
3 or that there is reasonable cause to believe that the subject
4 institution, subject person, or holding company is about to engage
5 or participate, in any unsafe or unsound act with respect to the
6 business of the subject institution.

7 (b) That the subject institution, subject person, or holding
8 company has violated, is violating, or that there is reasonable cause
9 to believe that the subject institution, subject person, or holding
10 company is about to violate any:

11 (1) Provision of any division subject to the jurisdiction of the
12 commissioner.

13 (2) Provision of any regulation promulgated by, or subject to
14 the jurisdiction of, the commissioner.

15 ~~(3) Provision of any order issued by the commissioner or under~~
16 ~~the commissioner's authority.~~

17 ~~(4)~~

18 (3) Provision of any other applicable law.

19 ~~(5)~~

20 (4) Provision of any written agreement ~~with~~ *between the subject*
21 *institution, subject person, or holding company, and the*
22 *commissioner.*

23 298.1. If the commissioner finds that any of the factors set
24 forth in Section 298 is true with respect to any subject institution,
25 subject person, or holding company, and that the action, *omission*,
26 or violation is likely to have any of the consequences set forth in
27 subdivisions (a) to (d), inclusive, the commissioner may, without
28 any prior notice or ~~hearing~~ *opportunity to be heard*, order the
29 subject institution or subject person to cease and desist from ~~the~~
30 ~~act or violation to the following:~~

31 (a) ~~Cause~~ *Any act, omission, or violation that may cause the*
32 *insolvency of the subject institution.*

33 (b) ~~Cause~~ *Any act, omission, or violation that may cause*
34 *significant dissipation of the assets or earnings of the subject*
35 *institution.*

36 (c) ~~Weaken~~ *Any act, omission, or violation that may weaken*
37 *the condition of the subject institution.*

38 (d) ~~Otherwise~~ *Any act, omission, or violation that may otherwise*
39 *prejudice the interests of the customers of the subject institution.*

299. If the commissioner finds that a subject institution's books or records are so incomplete or inaccurate that the commissioner is unable through the normal supervisory process to determine the financial condition of the subject institution or the details or purpose of any transaction or transactions that may materially affect the financial condition of the subject institution, the commissioner may, without any prior notice or hearing, order the subject institution to do either of the following:

(a) Cease any activity or practice that gave rise, in whole or in part, to the incomplete or inaccurate state of the books or records.

(b) Take affirmative action to restore the books or records to a complete and accurate state.

300. If, after notice and an opportunity ~~for a hearing to be heard~~, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any of the factors set forth in subdivision (c) are true with respect to a subject person of a subject institution or holding company, the commissioner may issue an order suspending or removing the subject person from the subject person's office, if any, with the subject institution or holding company, and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution or holding company without the approval of the commissioner:

(a) (1) That the subject person has, directly or indirectly, violated, *or has caused a subject institution to violate*, any provision of any:

(A) Division subject to the jurisdiction of the commissioner.

(B) Regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(C) Other applicable law.

(D) Order issued by the commissioner or under the commissioner's authority.

(E) Written agreement ~~with~~ *between the subject institution, subject person, or holding company and the commissioner*.

(2) That the subject person has, directly or indirectly, engaged or participated in any unsafe or unsound act in connection with the business of the subject institution, holding company, or any other business institution.

1 (3) That the subject person has, directly or indirectly, engaged
2 or participated in any act that constitutes a breach of the subject
3 person's fiduciary duty.

4 (b) That, by reason of the act, violation, or breach of fiduciary
5 duty described in subdivision (a):

6 (1) The subject institution, holding company, or business
7 institution has suffered or will probably suffer financial loss or
8 other harm.

9 (2) The rights or interests of the customers or members of the
10 subject institution have been or could be prejudiced.

11 (3) The subject person has received financial gain or other
12 benefit.

13 (c) That the act, violation, or breach of fiduciary duty described
14 in subdivision (a) either involves dishonesty on the part of the
15 subject person or demonstrates the subject person's willful or
16 continuing disregard for the safety or soundness of the subject
17 institution, holding company, or business institution.

18 300.1. If the commissioner finds that any of the factors set
19 forth in subdivision (a) of Section 300, any of the factors set forth
20 in subdivision (b) of Section 300, and any of the factors set forth
21 in subdivision (c) of Section 300 are true with respect to a subject
22 person of a subject institution, and that it is necessary or advisable
23 for the protection of the subject institution or holding company,
24 or the rights or interests of the customers or members of the subject
25 institution, the commissioner may, without any prior notice or
26 ~~hearing~~ *opportunity to be heard*, issue an order suspending the
27 subject person from the subject person's office, if any, with the
28 subject institution or holding company, and prohibiting the subject
29 person from participating in any manner in the conduct of the
30 affairs of the subject institution or holding company without the
31 prior approval of the commissioner.

32 300.2. (a) If the commissioner finds that any of the factors set
33 forth in paragraph (1) and the factor set forth in paragraph (2) are
34 true with respect to a subject person or former subject person of a
35 subject institution or holding company, the commissioner may,
36 without any prior notice or ~~hearing~~ *opportunity to be heard*, issue
37 an order suspending the subject person or former subject person
38 from his or her office, if any, with the subject institution or holding
39 company and prohibiting him or her from further participating in

1 any manner in the conduct of the affairs of the subject institution
2 or holding company without the approval of the commissioner:

3 (1) That the subject person or former subject person has been
4 charged in an indictment issued by a grand jury or in an
5 information, complaint, or similar pleading issued by a United
6 States attorney, district attorney, or other governmental official or
7 agency authorized to prosecute crimes, with commission of or
8 participation in any of the following:

9 (A) A crime that involves dishonesty or breach of trust and that
10 is punishable by imprisonment for a term exceeding one year.

11 (B) A criminal violation of any provision of this division.

12 (C) A criminal violation of Section 1956, 1957, or 1960 of Title
13 18 of, or Section 5322 or 5324 of Title 31 of, the United States
14 Code.

15 (D) A criminal violation of a law of any jurisdiction other than
16 the United States that is substantially similar to any of the statutes
17 specified in subparagraph (C).

18 (2) That continued or resumed service or participation by the
19 subject person or former subject person may pose a threat to the
20 rights or interests of the customers or members of the subject
21 institution or may threaten to impair public confidence in the
22 subject institution.

23 (b) An order issued pursuant to subdivision (a) shall remain in
24 effect until the indictment or the information, complaint, or similar
25 pleading is finally disposed of or, if the order is earlier terminated
26 by the commissioner, until the order is so terminated.

27 (c) If the commissioner finds that the factors set forth in
28 paragraphs (1) and (2) are true with respect to a subject person or
29 former subject person of a subject institution or holding company,
30 the commissioner may, without any prior notice or ~~hearing~~
31 *opportunity to be heard*, issue an order suspending or removing
32 the subject person or former subject person from his or her office,
33 if any, with the subject institution or holding company and
34 prohibiting him or her from further participating in any manner in
35 the affairs of the subject institution or holding company without
36 the approval of the commissioner:

37 (1) That the subject person or former subject person has been
38 finally convicted of any crime of the type described in paragraph
39 (1) of subdivision (a). For purposes of this paragraph, an agreement

1 to enter a pretrial diversion or similar program is deemed to be a
2 conviction.

3 (2) That continued or resumed service or participation by the
4 subject person or former subject person may pose a threat to the
5 interests of the customers of the subject institution or may threaten
6 to impair public confidence in the subject institution.

7 (d) The fact that any subject person of a subject institution
8 charged with a crime of the type described in paragraph (1) of
9 subdivision (a) is not finally convicted of the crime does not
10 preclude the commissioner from issuing an order regarding the
11 subject person pursuant to any other provision of this article.

12 300.3. (a) Any subject institution, subject person of a subject
13 institution, or former subject person of a subject institution to
14 whom an order is issued under Sections 300 to 300.2, inclusive,
15 may apply to the commissioner to modify or rescind the order. In
16 deciding whether to grant or deny the application, the commissioner
17 shall consider whether it is in the public interest to modify or
18 rescind the order and whether it is reasonable to believe that the
19 subject person or former subject person will, if and when he or
20 she becomes a subject person of a subject institution or holding
21 company, comply with all applicable provisions of law, or any
22 regulation or order issued by the commissioner.

23 (b) The right of any subject person or former subject person of
24 a subject institution or holding company to whom an order is issued
25 under Sections 300 to 300.2, inclusive, to petition for judicial
26 review of the order shall not be affected by the failure of the subject
27 institution or holding company to apply to the commissioner
28 pursuant to subdivision (a) to modify or rescind the order.

29 300.4. (a) In this section, "subject depository institution" means
30 any:

31 (1) Licensee or any bank or credit union that maintains an office
32 in this state.

33 (2) Affiliate of any of the institutions specified in paragraph
34 (1).

35 (3) Subsidiary of any of the institutions specified in paragraph
36 (1).

37 (4) Holding company of any of the institutions specified in
38 paragraph (1).

39 (b) It is unlawful for any subject person or former subject person
40 of a subject institution, ~~or holding company~~ to whom an order is

1 issued under Sections 300 to 300.2, inclusive, ~~wilfully~~ *willfully* to
2 do, directly or indirectly, any of the following without the approval
3 of the commissioner, so long as the order is in effect:

4 (1) Act as a subject person of any subject depository institution.

5 (2) Vote any shares or other securities having voting rights for
6 the election of any person as a director of a subject depository
7 institution.

8 (3) Solicit, procure, transfer or attempt to transfer, or vote any
9 proxy, consent, or authorization with respect to any shares or other
10 securities of a subject depository institution having voting rights.

11 (4) Otherwise to participate in any manner in the affairs of any
12 subject depository institution.

13 301. The commissioner may revoke or suspend any license
14 issued by, or under the authority of, the commissioner, if, after
15 notice and opportunity ~~for hearing, he or she to be heard, the~~
16 *commissioner* finds any of the following:

17 (a) The licensee has violated, is violating, or that there is
18 reasonable cause to believe that the ~~subject institution, subject~~
19 ~~person, or holding company~~ *licensee* is about to violate, any
20 provision of any of the following:

21 (1) Any division subject to the jurisdiction of the commissioner.

22 (2) Any regulation promulgated by, or subject to the jurisdiction
23 of, the commissioner.

24 ~~(3) Any order issued by the commissioner or under the~~
25 ~~commissioner's authority.~~

26 ~~(4) Any other applicable law.~~

27 ~~(5) Any written agreement with the commissioner.~~

28 (3) *A provision of any other applicable law.*

29 (4) *A provision of any order issued by the commissioner.*

30 (5) *A provision of any written agreement between the licensee*
31 *and the commissioner.*

32 (6) *A condition imposed on any written approval granted by*
33 *the commissioner.*

34 (b) Any fact or condition exists which, if it had existed at the
35 time of the original application for the license, would be grounds
36 for denying the application for the license.

37 (c) The licensee is conducting its business in an unsafe manner.

38 (d) The licensee is in such condition that it is unsafe or unsound
39 for the licensee to transact appropriate licensee business.

1 (e) The licensee has inadequate capital *or net worth* or is
2 insolvent.

3 (f) The licensee failed to pay any of its obligations as they came
4 due or is reasonably expected to be unable to pay its obligations
5 as they come due.

6 (g) The licensee has applied for an adjudication of bankruptcy,
7 reorganization, arrangement, or other relief under any bankruptcy,
8 reorganization, insolvency, or moratorium law, or that any person
9 has applied for any such relief under any such law against the
10 licensee and the licensee has by any affirmative act approved of,
11 or consented to, the action or the relief has been granted.

12 (h) The licensee has ceased to transact appropriate licensee
13 business.

14 (i) The licensee refuses to submit its books, papers, and affairs
15 to the inspection of any examiner.

16 (j) Any officer of the licensee refuses to be examined upon oath
17 touching the concerns of the licensee.

18 (k) The licensee has, with the approval of its board, requested
19 the commissioner to take possession of its property and business.

20 301.1. If the commissioner finds that any of the factors set
21 forth in Section 301 is true with respect to any licensee and that it
22 is necessary for the protection of the public interest, the
23 commissioner may issue an order immediately suspending or
24 revoking the licensee's license.

25 302. If the commissioner finds that any of the factors set forth
26 in subdivisions (a) to (k), inclusive, is true with respect to a
27 licensee, the commissioner may by order, without any prior notice
28 or ~~hearing~~ *opportunity to be heard*, take possession of the property
29 and business of the licensee:

30 (a) The licensee has violated any provision of (1) any division
31 subject to the jurisdiction of the commissioner, (2) any regulation
32 promulgated by, or subject to the jurisdiction of, the commissioner,
33 ~~(3) any order issued by the commissioner or under the~~
34 ~~commissioner's authority, (4) any other applicable law, or (5) any~~
35 ~~written agreement with the commissioner.~~ *(3) any provision of any*
36 *other applicable law, (4) any provision of any order issued by the*
37 *commissioner, (5) any provision of any written agreement made*
38 *between the commissioner and the licensee, or (6) a condition*
39 *imposed on any written approval granted by the commissioner.*

1 (b) The licensee is conducting its business in an unsafe or
2 unsound manner.

3 (c) The licensee is in such condition that it is unsafe or unsound
4 for the licensee to transact appropriate licensee business.

5 (d) The licensee has inadequate capital *or net worth* or is
6 insolvent.

7 (e) If the licensee is a bank, the tangible shareholders' equity
8 of the bank is less than the following:

9 (1) If the bank is a commercial bank or industrial bank, the
10 greater of three percent of the bank's total assets or one million
11 dollars (\$1,000,000).

12 (2) If the bank is a trust company other than a commercial bank
13 authorized to engage in trust business, one million dollars
14 (\$1,000,000).

15 (f) The licensee failed to pay any of its obligations as they came
16 due or is reasonably expected to be unable to pay its obligations
17 as they come due.

18 (g) The licensee has applied for an adjudication of bankruptcy,
19 reorganization, arrangement, or other relief under any bankruptcy,
20 reorganization, insolvency, or moratorium law, or that any person
21 has applied for any such relief under any such law against the
22 licensee and the licensee has by any affirmative act approved of
23 or consented to the action or the relief has been granted.

24 (h) The licensee has ceased to transact ~~appropriate licensee~~
25 ~~business~~; *the business the licensee is authorized to conduct*
26 *pursuant to its license*.

27 (i) The licensee refuses to submit its books, papers, and affairs
28 to the inspection of any examiner.

29 (j) Any officer of the licensee refuses to be examined upon oath
30 touching the concerns of the licensee.

31 (k) The licensee has, with the approval of its board, requested
32 the commissioner to take possession of its property and business.

33 302.1. (a) If the commissioner takes possession of the property
34 and business of a licensee pursuant to Section 302, the licensee
35 may, within 10 days, apply to the superior court in the county
36 where its head office is located to enjoin further proceedings. The
37 court may, after citing the commissioner to show cause why further
38 proceedings should not be enjoined and after a hearing, dismiss
39 the application or enjoin the commissioner from further
40 proceedings and order the commissioner to surrender the property

1 and business of the licensee to the licensee or make any further
2 order as may be just. The judgment of the court may be appealed
3 by the commissioner or by the licensee as allowed by law.

4 (b) At any time after the commissioner takes possession of the
5 property and business of a licensee pursuant to Section 302, the
6 licensee may, with the approval of the commissioner, resume
7 business upon conditions as the commissioner may prescribe.

8 302.2. (a) Upon taking possession of the property and business
9 of any licensee, the commissioner shall give notice of that fact to
10 all persons holding or having in their possession any assets of the
11 licensee. No person knowing of the taking or who has been notified
12 thereof shall have a lien or charge upon any assets of the licensee
13 for any payment, advance, or clearance thereafter made or for any
14 liability thereafter incurred.

15 (b) The giving of notice in accordance with this section shall
16 not be deemed to be a prerequisite to the taking of possession of
17 the property and business of the licensee.

18 302.3. *The commissioner is deemed to take possession of the*
19 *entire property and business of a licensee when the commissioner*
20 *takes possession of the business and property of the head office of*
21 *the licensee.*

22 ~~SEC. 18.~~

23 SEC. 20. Article 8 (commencing with Section 305) is added
24 to Chapter 2 of Division 1 of the Financial Code, to read:

25
26 Article 8. Liquidation and Conservation
27

28 305. In this article, "Federal Insurance Agency" means the
29 Federal Deposit Insurance Corporation or the National Credit
30 Union Administration, as appropriate, or their respective
31 successors-in-interest.

32 305.1. Upon taking possession of the property and business of
33 any licensee, the commissioner has authority, and it is his or her
34 duty, to collect all moneys due to the licensee and to do other acts
35 as are necessary or expedient to collect, conserve, or protect the
36 licensee's assets, property, and business, and he or she shall
37 proceed to conserve or liquidate the affairs of the licensee as
38 provided in this article.

1 305.2. No attachment shall be issued against the property of
2 any licensee subject to conservation or liquidation pursuant to this
3 article.

4 305.3. Upon taking possession of the property and business of
5 any licensee pursuant to Section 302, the commissioner may
6 proceed to liquidate or conserve the licensee in the manner
7 provided by this article.

8 305.4. Upon taking possession of the property and business of
9 a licensee pursuant to Section 302, the commissioner may tender
10 to any person an appointment as conservator, liquidator, or receiver
11 of the licensee.

12 305.5. The commissioner shall supervise the acts of the
13 conservator, liquidator, liquidating agent, or liquidating committee
14 appointed under this article and may remove the conservator,
15 liquidator, liquidating agent, or any or all members of the
16 liquidating committee in his or her discretion.

17 305.6. If required by the commissioner, the conservator,
18 liquidator, liquidating agent, or members of the liquidating
19 committee appointed under this article shall provide proof of bond
20 coverage that extends to the liquidating agent or members of the
21 liquidating committee. The bond shall include fraud, dishonesty,
22 and faithful performance coverage. The premium for that bond
23 shall be paid out of the assets of the licensee.

24 305.7. (a) If the commissioner retains possession of the assets
25 of the licensee for the purpose of liquidation or conservation, the
26 commissioner shall, to the extent possible, use the services of civil
27 service employees of the commissioner's office, and the attorneys
28 employed by the commissioner or the Department of Justice shall
29 render all necessary legal services, as the commissioner may
30 request.

31 (b) The commissioner, from time to time, under his or her
32 official seal, may appoint one or more special deputy
33 commissioners as his or her agent or agents with the powers
34 specified in the certificate of appointment to assist him or her in
35 the duties of conservation or of liquidation and distribution. The
36 certificate of appointment shall be filed in the office of the
37 commissioner and a certified copy in the office of the clerk of the
38 county in which the head office of the licensee is located. The
39 commissioner may employ counsel and procure expert assistance
40 and advice as may be necessary in the liquidation and distribution

1 of the assets of the licensee and for that purpose may retain any
2 of the officers or employees of the licensee as the commissioner
3 may deem necessary.

4 305.8. The compensation of civil service employees, special
5 deputies, counsel, and other employees and assistants appointed
6 to assist in the conservation or liquidation of any licensee and the
7 distribution of its assets and all expenses of supervision and
8 liquidation shall be fixed by the commissioner and shall be paid
9 out of the funds of the licensee in the hands of the commissioner.
10 The expenses of liquidation shall be reported to the court upon
11 each application for payment of a dividend.

12 305.9. If a licensee is not insured by a Federal Insurance
13 Agency, upon the commissioner taking possession of the business
14 and property of the licensee, the superior court of the State of
15 California for the county in which the head office of the licensee
16 is located shall have exclusive original jurisdiction of all
17 proceedings relating thereto and of any action or other proceedings
18 brought under the provisions of this article. All papers relating to
19 the proceeding, including copies of the certificate of appointment
20 of any special deputy and the inventories required to be filed, shall
21 be filed and be made a part of the record of the proceeding without
22 the payment of any additional fees. No damages may be awarded
23 in the proceeding but, if sought, may only be recovered in a
24 separate action.

25 310. If the licensee whose property and business has been taken
26 pursuant to Section 302 is insured by a Federal Insurance Agency,
27 the commissioner may tender to the appropriate Federal Insurance
28 Agency an appointment as conservator, liquidator, or receiver of
29 the licensee. *The commissioner shall determine whether the*
30 *licensee whose property and business has been taken shall be*
31 *liquidated or conserved.* If the Federal Insurance Agency accepts
32 the appointment, the Federal Insurance Agency shall have, in
33 addition to any powers conferred by applicable federal law, the
34 powers conferred on the commissioner pursuant to this article.

35 310.1. The Federal Insurance Agency may be, and act as, a
36 conservator, liquidator, or receiver without bond.

37 310.2. If the Federal Insurance Agency accepts the appointment
38 in accordance with Section 310.1, the rights of customers and other
39 creditors of the insured licensee shall be determined in accordance
40 with the applicable provisions of the laws of this state.

1 310.3. The Federal Insurance Agency conservator, liquidator,
2 or receiver shall possess with respect to the insured licensee all
3 the powers, rights, and privileges given the commissioner under
4 this article with respect to the conservation or liquidation of a
5 licensee, as appropriate, and the property and assets of which he
6 or she has taken possession, except insofar as the same may be in
7 conflict with the provisions of applicable federal law.

8 310.4. (a) The commissioner may sell *to any other licensee*
9 any part or the whole of the business of a licensee ~~to any other~~
10 ~~licensee that is subject to liquidation or conservatorship~~. The
11 purchase and sale shall be approved by the purchasing licensee,
12 as follows:

13 (1) If the purchasing licensee is organized under the laws of this
14 state, by two-thirds of all of its directors.

15 (2) If the licensee is any licensee other than a licensee organized
16 under the laws of this state, in accordance with the laws of the
17 jurisdiction under which the licensee is organized.

18 (b) (1) Subject to any applicable federal statutes and regulations,
19 any bank or credit union organized under the laws of this state
20 may, with the approval of two-thirds of all of its directors ~~and of~~
21 ~~the commissioner~~, purchase from the receiver of a national banking
22 association or a federal credit union the whole or any part of the
23 business of the national banking association or federal credit union.

24 (2) Subject to any applicable federal statutes and regulations
25 and any applicable laws of the jurisdiction under which a foreign
26 corporation is organized, any foreign corporation or office of a
27 foreign corporation that is licensed by the commissioner to transact
28 business in this state and that is authorized to accept shares or
29 deposits in this state, may, ~~with the approval of the commissioner~~,
30 purchase from the receiver of a national banking association or
31 federal credit union the whole or any part of the business of the
32 national banking association or federal credit union.

33 (c) The provisions of Chapter 12 (commencing with Section
34 1200) and Chapter 13 (commencing with Section 1300) of Division
35 1 of Title 1 of the Corporations Code shall not apply to any
36 purchase and sale of the type described in subdivision (a) or (b).

37 (d) When a purchase and sale of the type described in
38 subdivision (a) or (b) becomes effective, the licensee shall, ipso
39 facto and by operation of law and without further transfer,
40 substitution, act, or deed, to the extent provided in the agreement

1 of the purchase and sale or in the order of the court approving the
2 purchase and sale and except as withheld or limited by the
3 agreement or by the order:

4 (1) Succeed to the rights, obligations, properties, assets,
5 investments, shares, deposits, demands, and agreements of the
6 licensee whose business is sold, subject to the right of every
7 customer of a licensee to withdraw his or her shares or deposit in
8 full on demand after the sale, irrespective of the terms under which
9 the share or deposit was made.

10 (2) Succeed to the rights, obligations, properties, assets,
11 investments, shares, deposits, demands, and agreements of the
12 whose business is sold under all trusts, executorships,
13 administrations, guardianships, conservatorships, agencies, and
14 other fiduciary or representative capacities, to the same extent as
15 though the purchasing licensee had originally assumed, acquired,
16 or owned the same, subject to the rights of trustors and beneficiaries
17 under the trusts so sold to nominate another or succeeding trustee
18 of the trust so sold after the sale.

19 (3) Succeed to and be entitled to take and execute the
20 appointment to executorships, trusteeships, guardianships,
21 conservatorships, and other fiduciary and representative capacities
22 to which the licensee whose business is sold is or may be named
23 in wills, whenever probated, or to which it is or may be named or
24 appointed by any other instrument.

25 (e) For purposes of subdivision (d), any purchase and sale of
26 the type referred to in subdivision (d) shall be deemed to be
27 effective at the time provided in the agreement of the purchase
28 and sale or in the order of the court approving the purchase and
29 sale.

30 315. Whenever the commissioner deems it necessary in order
31 to conserve the assets of any licensee *that does not have federal*
32 *deposit or share insurance* for the benefit of the customers and
33 other creditors, he or she may appoint a conservator of the licensee
34 and require the conservator to post a bond as the commissioner
35 deems proper. The conservator, under the direction of the
36 commissioner, shall take possession of the books, records, and
37 assets of every description of the licensee and take any action as
38 the conservator may deem necessary to conserve the assets of the
39 licensee pending further disposition of its business.

1 315.1. A conservator appointed in accordance with Section
2 315 has all of the powers and rights with relation to the business
3 and the property of the licensee for which he or she is appointed
4 conservator as are possessed by the commissioner under this article
5 with relation to a licensee of which the commissioner has taken
6 possession, and the conservator is subject to the same obligations
7 as are imposed upon the commissioner under this article. During
8 the time that the conservator remains in possession of the licensee
9 the rights of the licensee, and of all persons with respect thereto,
10 subject to the other provisions of this article, are the same as if the
11 commissioner had taken possession of the property and business
12 of the licensee for the purposes of liquidation. All expenses of the
13 conservatorship shall be paid out of the assets of the licensee and
14 shall be a lien thereon which shall be prior to any other lien. The
15 conservator shall receive a salary in an amount no greater than that
16 which would be paid by the commissioner to a special deputy in
17 charge of the liquidation of a licensee.

18 315.2. The commissioner may order an examination at the
19 earliest possible date of a licensee for which the commissioner has
20 appointed a conservator.

21 315.3. While any licensee is in the hands of a conservator, the
22 commissioner may require the conservator to set aside and make
23 available for withdrawal by customers and for payment to other
24 creditors on a ratable basis such amounts as in the opinion of the
25 commissioner may safely be used for that purpose.

26 315.4. The commissioner, in his or her discretion, may permit
27 the conservator to receive shares or deposits, but any shares or
28 deposits received while the licensee is in the hands of a conservator
29 shall be held as trust funds and shall not be subject to any limitation
30 as to payment or withdrawal. The shares or deposits shall be
31 segregated and shall not be used to liquidate any indebtedness of
32 the licensee existing at the time the conservator was appointed or
33 for the payment of any later indebtedness incurred for the purpose
34 of liquidating any indebtedness of the licensee existing at the time
35 the conservator was appointed. The shares or deposits shall be kept
36 on hand in cash, invested in direct obligations of the United States,
37 or deposited with the Federal Reserve Bank.

38 315.5. If the commissioner is satisfied that it may be done
39 safely and that it would be in the public interest, he or she may
40 terminate a conservatorship and permit the licensee for whom a

1 conservator was appointed to resume the transaction of its business
2 under the direction of its board, subject to any terms, conditions,
3 restrictions, and limitations as the commissioner may prescribe.

4 315.6. The conservator of a licensee that has been permitted
5 to resume accepting member shares or deposits shall first cause a
6 notice to be published in a newspaper of local circulation. The
7 notice shall state the date on which the affairs of the licensee will
8 be returned to its board and that the provisions of Section 315.4
9 will not be effective after 30 days from that date. The form of the
10 notice and the newspaper in which the same is to be published
11 shall be first approved by the commissioner. On the date of the
12 publication of the notice, the conservator shall mail a copy of the
13 notice to every person who made any deposit in the licensee after
14 the date of the appointment of the conservator. The conservator
15 shall address the copy of the notice to the persons who have made
16 the deposits at the addresses appearing upon the books of the
17 licensee. The conservator shall also mail a similar notice to every
18 person making a deposit in the licensee after the date of the
19 publication of the notice and before the affairs of the licensee are
20 returned to its board.

21 315.7. The commissioner may assess and collect from all
22 licensees for whom a conservator is appointed their ratable share
23 of the costs incurred in the administration of this article.

24 315.8. Any licensee that the commissioner has taken possession
25 of pursuant to Section 302, and for which a conservator has been
26 appointed pursuant to this article, may be reorganized under a plan
27 that requires the consent of any of the following:

28 (a) Customers and other creditors of the licensee representing
29 at least 75 percent in amount of its total member shares or deposits
30 and other liabilities as shown by the books of the licensee,
31 excluding member shares or deposits and other liabilities which
32 are to be satisfied in full under the provisions of the plan.

33 (b) Stockholders owning at least two-thirds of the outstanding
34 stock as shown by the books of the licensee.

35 (c) Members of the licensee.

36 (d) Customers and other creditors of the licensee representing
37 at least 75 percent in amount of its total shares or deposits and
38 other liabilities as shown by the books of the licensee, excluding
39 shares or deposits and other liabilities that are to be satisfied in
40 full under the provisions of the plan, and, if applicable to the

1 licensee, of stockholders owning at least two-thirds of its
2 outstanding stock as shown by the books of the licensee.

3 315.9. All customers, creditors, stockholders, if applicable,
4 and other interested persons shall be given notice of any proposed
5 plan of reorganization in the manner and at the times as the
6 commissioner directs.

7 315.10. No plan of reorganization shall become effective until
8 the commissioner finds that the plan is fair and equitable to all
9 customers, creditors, and stockholders, if applicable, and is in the
10 public interest and until the commissioner approves the same in
11 writing, subject to any conditions, restrictions, and limitations as
12 the commissioner may prescribe.

13 315.11. No creditor having security for the payment of his,
14 her, or its claim shall be affected in his, her, or its right to enforce
15 the security by the provisions of any plan for the reorganization
16 of the licensee. Any plan of reorganization involving the reduction
17 of claims of creditors shall apply only to that portion of a secured
18 creditor's loan that is not covered by the pledged security.

19 315.12. When any plan of reorganization becomes effective,
20 all books, records, and assets of the licensee shall be disposed of
21 in accordance with the provisions of the plan and the affairs of the
22 licensee shall be conducted by its board in the manner provided
23 by the plan and under the conditions, restrictions, and limitations
24 that may have been prescribed by the commissioner. When any
25 plan of reorganization adopted and approved as herein provided
26 becomes effective, all customers and other creditors and, if
27 applicable, stockholders of the licensee, whether or not they have
28 consented to the plan of reorganization, shall be fully and in all
29 respects subject to and bound by the plan's provisions and the
30 claims of all customers and other creditors shall be treated as if
31 they had consented to the plan of reorganization.

32 320. ~~The~~ Upon taking possession of the property and business
33 of a licensee that does not have federal deposit or share insurance,
34 the commissioner may sell, compromise, or compound any bad or
35 doubtful debt owing the licensee for a principal sum not exceeding
36 ten thousand dollars (\$10,000), upon those terms as the
37 commissioner may deem proper. If the principal sum thereof
38 exceeds ten thousand dollars (\$10,000), the commissioner may
39 compromise, compound, or sell the debt upon those terms as the
40 court may approve. If it appears improbable that a recovery on a

1 debt can be had, and that the costs of an action to collect would
2 be lost, and the principal sum thereof does not exceed five hundred
3 dollars (\$500), the commissioner may determine that no suit
4 thereon shall be brought. If the principal sum of that debt exceeds
5 ten thousand dollars (\$10,000), the commissioner may determine
6 that no suit thereon be brought after obtaining approval of the
7 court.

8 320.1. The commissioner may sell any real or personal property
9 of the licensee for cash or on credit and on any other terms and
10 conditions as the commissioner may deem proper, subject to the
11 approval of the court.

12 320.2. (a) The commissioner may, with the approval of the
13 court, sell any part or the whole of the business of a licensee to
14 any other licensee. The purchase and sale shall be approved by the
15 purchasing licensee, as follows:

16 (1) If the purchasing licensee is organized under the laws of this
17 state, by two-thirds of all of its directors.

18 (2) If the licensee is any licensee other than a licensee organized
19 under the laws of this state, in accordance with the laws of the
20 jurisdiction under which the licensee is organized.

21 (b) (1) Subject to any applicable federal statutes and regulations,
22 any bank or credit union organized under the laws of this state
23 may, with the approval of two-thirds of all of its directors and of
24 the commissioner, purchase from the receiver of a national banking
25 association or a federal credit union the whole or any part of the
26 business of the national banking association or federal credit union.

27 (2) Subject to any applicable federal statutes and regulations
28 and any applicable laws of the jurisdiction under which a foreign
29 corporation is organized, any foreign corporation or any office of
30 a foreign corporation that is licensed by the commissioner to
31 transact business in this state and that is authorized to accept shares
32 or deposits in this state, may, with the approval of the
33 commissioner, purchase from the receiver of a national banking
34 association or federal credit union the whole or any part of the
35 business of the national banking association or federal credit union.

36 (c) The provisions of Chapter 12 (commencing with Section
37 1200) and Chapter 13 (commencing with Section 1300) of Division
38 1 of Title 1 of the Corporations Code shall not apply to any
39 purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective, the purchasing licensee shall, by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by the agreement or by the order:

(1) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold, subject to the right of every customer of the licensee whose shares or deposit is sold to withdraw his or her shares or deposit in full on demand after the sale, irrespective of the terms under which the deposit was made.

(2) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as though the purchasing licensee had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale.

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the licensee whose business is sold is or may be named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at the time provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale.

320.3. Within six months after taking possession of the property and business of any licensee, the commissioner may terminate or adopt any executory contract to which the licensee *that does not have federal deposit or share insurance* may be a party including leases of real or personal property. Claims for damages resulting from the termination of any the contract or lease may be filed and allowed, but no claim of a landlord for damages resulting from the

1 rejection of an unexpired lease of real property or under any
2 covenant of the lease shall be allowed in an amount exceeding the
3 rent reserved by the lease, without acceleration, for the year
4 succeeding the date of the surrender of the premises plus the
5 amount of any unpaid accrued rent without acceleration. Any claim
6 shall be filed within 30 days of the date of the termination or within
7 the time that claims are to be filed under Section 320.10, whichever
8 is longer.

9 320.4. The commissioner, in his or her own name or in the
10 name of the licensee, may execute, acknowledge, and deliver any
11 and all conveyances and other instruments necessary or appropriate
12 to effectuate the sale of any real or personal property or to
13 effectuate any other transaction in connection with the liquidation
14 of a licensee or the distribution of its assets. Any conveyance or
15 other instrument executed by the commissioner pursuant to this
16 authority shall be valid and effectual for all purposes as though
17 the same had been executed by the officers of the licensee by
18 authority of its board of directors. Whenever the commissioner
19 sells any real property of the licensee a certified copy of the order
20 of the court approving the sale shall be recorded in the county in
21 which any part of the real property is located.

22 320.5. The commissioner, in the name of the delinquent
23 licensee or in his or her own name, may prosecute and defend any
24 and all actions and other legal proceedings appropriate or necessary
25 to the liquidation of the licensee.

26 320.6. The commissioner from time to time shall deposit all
27 moneys coming into his or her hands in the course of the liquidation
28 of the licensee in one or more state banks or state credit unions
29 and in the event of the suspension or insolvency of the depository
30 shall be preferred before all other deposits.

31 320.7. The commissioner shall make an inventory of the assets
32 of the licensee in duplicate and file one in the office of the
33 commissioner and one with the clerk of the county in which the
34 head office of the licensee is located to be filed with the papers in
35 the liquidation proceedings. The inventory shall be open for
36 inspection at all reasonable times.

37 320.8. When the time fixed for the presentation of claims has
38 expired, the commissioner shall make in duplicate a full and
39 complete list of all claims presented, including and specifying
40 claims that have been rejected by the commissioner, and a list of

1 all claims of customers as shown by the books or records of the
2 licensee for which claims have not yet been presented, and shall
3 file one copy of the list in the commissioner's office and one with
4 the clerk of the county in which the head office of the licensee is
5 located to be filed with the papers in the liquidation proceedings.
6 Before each application to the court for leave to declare a dividend,
7 the commissioner shall file a supplemental list of claims presented
8 since the last preceding list was filed, including and specifying
9 any claims that have been rejected by him or her. The list of claims
10 and of claims of customers as shown by the books or records of
11 the licensee shall be open for inspection at all reasonable times.

12 320.9. The commissioner shall cause notice to be given by
13 advertisement in any newspapers of general circulation as he or
14 she may select weekly for three consecutive months, calling on
15 all persons who have claims against the licensee to present the
16 same to the commissioner and make legal proof thereof at a place
17 to be specified therein and within four months of the date of the
18 first publication of the notice, which date shall be specified in the
19 notice. The notice shall also state that all claims other than those
20 of customers appearing upon the books or records of the licensee
21 shall be forever barred if not filed within the four months' period
22 and that all claims of customers appearing upon the books or
23 records of the licensee will be forever barred, except as herein
24 provided, if not filed prior to the filing of a petition for a final
25 dividend. The commissioner shall also mail a similar notice to all
26 persons, including customers whose names appear as creditors
27 upon the books of the licensee and whose addresses appear upon
28 the books or records of the licensee, and shall enclose therewith a
29 printed form of notice of claim.

30 320.10. All claims of every kind against the licensee or against
31 any property owned or held by the licensee shall be presented to
32 the commissioner in writing verified by the claimant or someone
33 on his or her behalf within four months of the date of the first
34 publication of the notice to creditors. Any claim, other than the
35 claim of a customer whose claim appears upon the books or records
36 of the licensee, not presented within the four months' period shall
37 be forever barred and any claim of a customer whose claim appears
38 upon the books or records of the licensee that is not so presented
39 prior to the date of the filing of the petition of the commissioner
40 with the court for approval of the payment of the final dividend

1 shall be forever barred except as to any moneys remaining after
2 all debts for which claims were duly filed have been paid in full
3 with interest. If the commissioner doubts the validity of any claim,
4 he or she may reject the claim and serve notice of the rejection
5 upon the claimant either by mail or personally. An affidavit of the
6 mailing or personal service of the notice shall be prima facie
7 evidence of the receipt thereof and shall be filed with the
8 commissioner. Any action upon a rejected claim shall be brought
9 within three months after the date of mailing or personal service
10 of the notice of rejection.

11 320.11. At any time and from time-to-time after the expiration
12 of the time fixed for the presentation of claims, the commissioner,
13 after obtaining approval of the court, may declare and pay one or
14 more dividends upon all approved claims out of the funds
15 remaining in his or her hands after the payment of expenses and
16 after setting aside an amount sufficient to pay to all customers,
17 who have not yet filed claims but whose claims appear upon the
18 books or records of the licensee, their pro rata share of the funds
19 then available for the payment of a dividend. At any time after the
20 expiration of one year from the date of the first publication of
21 notice to creditors and after obtaining the approval of the court,
22 the commissioner may declare and pay a final dividend.

23 320.12. (a) Expenses and claims of unsecured creditors have
24 priority in the following order:

25 (1) Expenses of liquidation and approved claims for fees and
26 assessments due the department.

27 (2) Approved claims given priority under other provisions of
28 state or federal law, including, but not limited to, Sections 320.6
29 and 330.

30 (3) Approved claims for “deposits,” as that term is defined in
31 12 U.S.C. Section 1813(*l*), but including obligations of the type
32 described in 12 U.S.C. Section 1813(*l*)(5)(A) and (B).

33 (4) Approved claims for other general liabilities.

34 (5) Approved claims for obligations subordinated to deposits
35 and other general liabilities.

36 (b) Interest shall be given the same priority as the claim on
37 which it is based, but no interest shall be paid on any claim until
38 the principal of all claims within the same class has been paid or
39 adequately provided for in full.

1 (c) Any funds remaining shall be paid to the members or
2 shareholders, as appropriate.

3 320.13. Objections to any claim not rejected by the
4 commissioner may be made by any person interested by filing a
5 copy of the objection with the commissioner, who shall present
6 the copy to the court at the time of the next application for approval
7 of the declaration of a dividend. The court shall thereupon dispose
8 of the objections or may order a reference for that purpose, and
9 should the objections to any claim be sustained by the court or by
10 the referee, the claim shall not be allowed by the commissioner
11 until the claimant has established the claim by judgment.

12 320.14. Dividends remaining unpaid and any sums available
13 for payment of shares or deposits for which no claim was filed,
14 which remain in the hands of the commissioner six months after
15 the order for the payment of a final dividend, shall be deposited
16 in the State Treasury. The shares or deposits shall be deemed to
17 have been received under Chapter 7 (commencing with Section
18 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and
19 shall be subject to claim or other disposition as provided in that
20 chapter. The commissioner may pay over the moneys held by him
21 or her to the persons respectively entitled thereto at any time prior
22 to depositing the shares or deposits in the State Treasury, upon
23 being furnished satisfactory evidence of the persons' right to the
24 same.

25 320.15. Whenever, under the provisions of this article, the
26 commissioner is required to transmit unclaimed money or other
27 unclaimed property to any state officer for deposit in the State
28 Treasury, the commissioner, upon request of the Controller, shall
29 transmit to the Controller all signature cards and any other
30 identifying information available from the records of the licensee,
31 covering the money or other property. Upon receipt by the
32 Controller of the signature cards or other identifying information,
33 the licensee and the commissioner shall be relieved of all
34 responsibility therefor. The signature cards and other identifying
35 information may be destroyed or otherwise disposed of by the
36 Controller whenever, in his or her discretion, their further retention
37 by him or her is no longer required in the interest of the customers
38 or the state.

39 320.16. All approved claims of customers and other creditors
40 shall bear interest at the rate provided by law on judgments from

1 the date that the commissioner takes possession of the property
2 and business of the licensee.

3 320.17. If the licensee has in its possession for safekeeping or
4 storage any jewelry, plate, money, specie, bullion, stocks, bonds,
5 securities, valuable papers, or other valuable personal property, or
6 has rented any vaults, safes, or safe-deposit boxes, the
7 commissioner shall cause to be mailed, by registered mail, postage
8 prepaid, to any known person claiming to be or appearing on the
9 books of the licensee to be the owner of the property or to the
10 person in whose name the safe, vault, or box stands a notice
11 notifying the person to remove all of the personal property within
12 a specified fixed period of not less than 60 days.

13 320.18. On the last day fixed in the notice for the removal of
14 the property or on the date when the property is removed or the
15 box surrendered, any contract between the person owning the
16 property or holding the box and the licensee shall cease and the
17 amount of the unearned prepaid rent or charges, if any, shall
18 become a debt of the licensee to the person.

19 320.19. If any property is not removed within the time fixed
20 by the notice mailed by the commissioner, the commissioner may
21 dispose of the property as the court, on application thereto, shall
22 direct. The commissioner may cause any safe, vault, or box to be
23 opened in his or her presence or in the presence of one of the
24 special deputy commissioners and of a notary not an officer or
25 employee of the licensee or of the commissioner. The contents
26 thereof, if any, shall be sealed by the notary in a package upon
27 which the notary shall distinctly mark the name and address of the
28 person in whose name the safe or box stands upon the books of
29 the licensee and shall attach thereon a list and a description of the
30 property within the package. The package so sealed and addressed,
31 together with the list and description may be kept by the
32 commissioner in one or more of the safes or boxes of the licensee
33 or elsewhere until delivered to the person whose name it bears or
34 until otherwise disposed of as directed by the court.

35 320.20. (a) When the commissioner has completed the
36 liquidation of the licensee, he or she shall petition the court for an
37 order declaring the licensee duly wound up and dissolved.

38 (b) After any notice as the court may direct and a hearing, the
39 court may make an order declaring the licensee duly wound up
40 and dissolved. The order shall declare all of the following:

1 (1) The licensee has been duly wound up.

2 (2) A final franchise tax return, if any, as described by Section
3 23332 of the Revenue and Taxation Code, has been filed with the
4 Franchise Tax Board as required under Part 10.2 (commencing
5 with Section 18401) of Division 2 of the Revenue and Taxation
6 Code, and any tax or penalty due under the Corporation Tax Law
7 has been paid, and the licensee's known debts and liabilities have
8 been paid or adequately provided for, or any taxes, penalties, debts,
9 and liabilities have been paid so far as the licensee's assets
10 permitted, as the case may be. If there are known debts or liabilities
11 for the payment of which adequate provision has been made, the
12 order shall describe the provision, setting forth any information
13 necessary to enable the creditor or other person to whom payment
14 is to be made to appear and claim payment of the debt or liability.

15 (3) All known assets of the licensee have been distributed to its
16 shareholders or wholly applied on account of the licensee's debts
17 and liabilities.

18 (4) The licensee is dissolved.

19 (c) The court may make additional orders and grant further relief
20 as it deems proper upon the evidence submitted.

21 (d) Upon the making of the order declaring the licensee
22 dissolved, the corporate existence of the licensee shall cease, except
23 for the purposes of any necessary further winding up.

24 (e) Upon the making of the order declaring the licensee
25 dissolved, the commissioner shall file with the Secretary of State
26 a copy of the order, certified by the clerk of the court.

27 320.21. Whenever this article requires court approval of any
28 step in the liquidation proceedings, approval shall be given after
29 a hearing upon notice as the court may direct. At the hearing, the
30 court may by order approve the actions of the commissioner for
31 which he or she has petitioned the court's approval or it may, by
32 appropriate order, otherwise direct the commissioner in the matter
33 in connection with which the petition was filed.

34 320.22. Whenever, in the opinion of the commissioner, the
35 liquidation or reorganization of any licensee taken in charge by
36 him or her would be facilitated, or the public interests and the
37 interests of customers or stockholders would be served, the
38 commissioner may borrow money on behalf of the licensee from
39 any federal agency authorized to lend money to receivers, trustees,
40 liquidating agents, or other agents or supervisory authorities in

1 charge of licensees that are closed or in process of liquidation and,
2 with approval of the court, the commissioner may secure any
3 borrowings by the pledge of the assets of the licensee in any
4 manner and amount the commissioner deems necessary, proper,
5 or expedient.

6 325. Whenever any licensee is being liquidated or whenever
7 the trust business of any licensee has been discontinued and the
8 licensee has in its possession money or other property held by it
9 in trust or for safekeeping and the beneficiaries or persons entitled
10 thereto are unknown or cannot be found, the commissioner or the
11 licensee, upon obtaining approval of the superior court of the
12 county in which the liquidation proceedings are pending or in
13 which the head office of the licensee is situated, may do the
14 following:

15 (a) In the case of money, deliver it to the Treasurer.

16 (b) In the case of other property, deliver it to the Controller for
17 deposit in the State Treasury.

18 325.1. Upon the delivery of any money to the Treasurer or
19 upon the delivery of any property to the Controller, a certified
20 copy of the order of the court approving the delivery shall be given
21 to the Controller, and upon the delivery of any money to the
22 Treasurer a notice giving the amount delivered shall be filed with
23 the Controller. Upon the receipt of any money or other properties,
24 the Treasurer or the Controller, as the case may be, shall issue a
25 receipt for the same and the receipt shall be deemed a voucher in
26 favor of the licensee to the same extent as though executed by the
27 beneficiary or other person entitled thereto.

28 325.2. All money or other property delivered to the Treasurer
29 or Controller pursuant to this article shall be deemed to be delivered
30 for deposit in the State Treasury under the provisions of Chapter
31 7 (commencing with Section 1500) of Title 10 of Part 3 of the
32 Code of Civil Procedure and shall be subject to claim or other
33 disposition as provided in that chapter.

34 330. The holder or transferor of a negotiable instrument
35 transferred to a licensee for collection has a preferred claim in the
36 amount of the liability of the licensee on the instrument if the
37 instrument was forwarded to the licensee by any person or by any
38 other financial institution for collection and remittance, if payment
39 therefor has not been made and if the same has been collected
40 either in whole or in part by the licensee, unless the holder or

1 transferor is a voluntary depositor in the licensee and the proceeds
2 of the collection, at his or her request, have been credited by the
3 licensee to his or her account.

4 ~~SEC. 19.~~

5 *SEC. 21.* Article 9 (commencing with Section 335) is added
6 to Chapter 2 of Division 1 of the Financial Code, to read:

7
8 Article 9. Voluntary Liquidation
9

10 335. Any licensee that voluntarily has ceased to do the business
11 for which it is licensed shall immediately notify the commissioner
12 and proceed to liquidate its affairs. Any share or deposit or other
13 sum that has not been paid to the person entitled thereto within six
14 months after the licensee ceased to conduct a business shall be
15 paid into the State Treasury. The deposits with the State Treasury
16 shall be deemed to have been received under the provisions of
17 Chapter 7 (commencing with Section 1500) of Title 10 of Part 3
18 of the Code of Civil Procedure and shall be subject to claim or
19 other disposition as provided in that chapter. If the commissioner
20 has reason to conclude that the liquidation of the licensee is not
21 being safely or expeditiously conducted, he or she may take
22 possession of the business and property of the licensee in the same
23 manner and with the same effect and subject to the same rights
24 accorded the licensee as if he or she had taken possession pursuant
25 to Article 8 (commencing with Section 305), and he or she may
26 proceed to liquidate the licensee's affairs in the same manner as
27 provided in that article. When the licensee has been completely
28 liquidated, its corporate existence shall be dissolved in the manner
29 provided by law.

30 335.1. If the licensee referred to in Section 335 is a state
31 chartered credit union and the commissioner has taken possession
32 of the business and property of the credit union, the commissioner
33 may appoint a liquidating agent or a liquidating committee of three
34 members of the credit union to liquidate the business and assets
35 of the credit union in the manner provided in Article 2
36 (commencing with Section 15250) of Chapter 9 of Division 5,
37 except that, in lieu of the certificate required under Section 15252,
38 the commissioner shall prepare and file in the office of the
39 Secretary of State a certificate of commencement of liquidation
40 proceedings upon taking possession of the business and assets,

1 and the commissioner or his authorized deputy shall countersign
2 the certificate referred to in Sections 15257 and 15258 whenever
3 liquidation is involuntary. The commissioner may, however,
4 prepare and file a final certificate whenever he or she retains
5 possession of the assets of any credit union for the purpose of
6 liquidation. The liquidating agent need not be a member of the
7 credit union to be liquidated and may be a person, firm, or
8 corporation, as determined by the commissioner.

9 ~~SEC. 20.~~

10 *SEC. 22.* Section 352 is added to the Financial Code, to read:

11 352. Except where *explicitly stated or* the context provides
12 otherwise, this division is applicable to the following:

13 (a) All corporations engaging in commercial banking, industrial
14 banking, or the trust business.

15 (b) All national banking associations authorized to transact
16 business in this state to the extent that the provisions of this division
17 are not inconsistent with and do not infringe paramount federal
18 laws governing national banking associations.

19 (c) All other corporations that subject themselves to the special
20 provisions and sections of this division.

21 (d) All other persons, associations, copartnerships, or
22 corporations who, by violating any of its provisions, become
23 subject to the penalties provided for in this division.

24 ~~SEC. 21.~~

25 *SEC. 23.* Section 353 is added to the Financial Code, to read:

26 353. (a) A California state bank is a corporation incorporated
27 under Division 1 (commencing with Section 100) of Title 1 of the
28 Corporations Code that is, with the approval of the commissioner,
29 incorporated for the purpose of engaging in, or that is authorized
30 by the commissioner to engage in, the commercial or industrial
31 banking business.

32 (b) All provisions of law applicable to corporations generally
33 including, but not limited to, the General Corporation Law
34 (Division 1 (commencing with Section 100), Title 1 of the
35 Corporations Code) shall apply to banks. However, whenever any
36 provision of this division or any regulation or order issued under
37 any provision (other than this section) of this division applicable
38 to banks is inconsistent with any provision of law applicable to
39 corporations generally, that provision of this division or that

1 regulation or order shall apply and the provision of law applicable
2 to corporations generally shall not apply.

3 ~~SEC. 22.~~

4 *SEC. 24.* Section 354 is added to the Financial Code, to read:

5 354. It shall be unlawful for any person, corporation, limited
6 liability company, partnership, firm, or any other form of business
7 entity allowed by law, to engage in or transact commercial banking
8 business, industrial banking business, or trust business within this
9 state except by means of a corporation duly organized for that
10 purpose.

11 ~~SEC. 23.~~

12 *SEC. 25.* Section 355 is added to the Financial Code, to read:

13 355. No corporation shall hereafter be organized under the
14 laws of this state to transact the business of a commercial bank,
15 industrial bank, or trust company, except as provided in this
16 chapter.

17 ~~SEC. 24.~~

18 *SEC. 26.* Section 356 is added to the Financial Code, to read:

19 356. Neither the enactment of this code nor the amendment or
20 repeal thereof, nor the repeal of any statute affected thereby, shall
21 take away or impair any liability or cause of action existing or
22 incurred against any bank or trust company, or the shareholders,
23 directors, or officers thereof.

24 *SEC. 27.* *Section 511 is added to the Financial Code, to read:*

25 *511. A bank, with the approval of its board, may discontinue*
26 *a facility office. Within 10 days of the date of the closure of the*
27 *facility office, the bank shall file a notice of that discontinuance*
28 *with the commissioner. The notice shall contain the information*
29 *required by Section 506. There shall be no fee associated with the*
30 *discontinuance of a facility office.*

31 ~~SEC. 25.~~

32 *SEC. 28.* Section 684 of the Financial Code is repealed.

33 *SEC. 29.* *Section 770 is added to the Financial Code, to read:*

34 *770. A bank, or the agent of a bank, that has received a notice*
35 *pursuant to Section 7507.6 of the Business and Professions Code,*
36 *shall not make a subsequent assignment to skip trace, locate, or*
37 *repossess a vehicle without simultaneously, and in the same manner*
38 *by which the assignment is given, advising the assignee of the*
39 *assignment of the information contained in the notice. As used in*

1 *this section, “assignment” has the same meaning set forth in*
2 *Section 7500.1 of the Business and Professions Code.*

3 *SEC. 30. Section 1210 of the Financial Code is amended to*
4 *read:*

5 1210. (a) In this article and in Article 4 (commencing with
6 Section 3860) of Chapter 22, “affiliate,” when used with respect
7 to a specified person, means any person controlling, controlled by,
8 or under common control with, the specified person, directly or
9 indirectly, through one or more intermediaries.

10 (b) “Control” has the meaning set forth in Section 700.

11 (c) “Regulated corporation” means any corporation *or limited*
12 *liability company or similar entity* in which a bank makes an equity
13 investment and which the bank controls.

14 (d) “Securities issued by a person” means any debt, equity, or
15 other security issued by a person, and any and all affiliates of that
16 person, issued for the benefit of that person or for the benefit of
17 an affiliate of that person.

18 *SEC. 31. Section 1211 of the Financial Code is amended to*
19 *read:*

20 1211. (a) Subject to the limitations *and exceptions* in Sections
21 1221 and 1330, a bank may hold both obligations made by a
22 person, and securities issued by that same person.

23 (b) The total amount of obligations and securities held by a bank
24 pursuant to subdivision (a) shall not exceed 25 percent of the sum
25 of the shareholders’ equity, allowance for loan and lease losses,
26 capital notes and debentures of the bank.

27 *SEC. 32. Section 1212 of the Financial Code is amended to*
28 *read:*

29 1212. Subject to prior approval by the commissioner and to
30 any limitations the commissioner may impose ~~on an investment,~~
31 ~~the limitations in subdivision (b) of Section 1211 and Section~~
32 ~~Sections 1211, 1221, and 1330 shall not apply to loans made by~~
33 ~~a bank to, and the bank’s investments by banks in securities of,~~
34 ~~its regulated corporations.~~

35 ~~SEC. 26:~~

36 *SEC. 33. Section 1583 of the Financial Code is amended to*
37 *read:*

38 1583. The commissioner shall examine the court trust business
39 of a trust company at least once every 24 months and shall examine

- 1 the private trust business at such times and to such extent as he or
2 she may deem necessary or advisable.
3 ~~SEC. 27.~~
4 *SEC. 34.* Section 1817 of the Financial Code is repealed.
5 ~~SEC. 28.~~
6 *SEC. 35.* Section 1818 of the Financial Code is repealed.
7 ~~SEC. 29.~~
8 *SEC. 36.* Section 1819 of the Financial Code is repealed.
9 ~~SEC. 30.~~
10 *SEC. 37.* Section 1819.5 of the Financial Code is repealed.
11 ~~SEC. 31.~~
12 *SEC. 38.* Section 1820 of the Financial Code is repealed.
13 ~~SEC. 32.~~
14 *SEC. 39.* Section 1821 of the Financial Code is repealed.
15 ~~SEC. 33.~~
16 *SEC. 40.* Section 1822 of the Financial Code is repealed.
17 ~~SEC. 34.~~
18 *SEC. 41.* Section 1824 of the Financial Code is repealed.
19 ~~SEC. 35.~~
20 *SEC. 42.* Section 1825 of the Financial Code is repealed.
21 ~~SEC. 36.~~
22 *SEC. 43.* Section 1880 of the Financial Code is repealed.
23 ~~SEC. 37.~~
24 *SEC. 44.* Section 1880.5 of the Financial Code is repealed.
25 ~~SEC. 38.~~
26 *SEC. 45.* Section 1881 of the Financial Code is repealed.
27 ~~SEC. 39.~~
28 *SEC. 46.* Section 1882 of the Financial Code is repealed.
29 ~~SEC. 40.~~
30 *SEC. 47.* Section 1883 of the Financial Code is repealed.
31 ~~SEC. 41.~~
32 *SEC. 48.* Section 1884 of the Financial Code is repealed.
33 ~~SEC. 42.~~
34 *SEC. 49.* Section 1885 of the Financial Code is repealed.
35 ~~SEC. 43.~~
36 *SEC. 50.* Section 1886 of the Financial Code is repealed.
37 ~~SEC. 44.~~
38 *SEC. 51.* Section 1887 of the Financial Code is repealed.
39 ~~SEC. 45.~~
40 *SEC. 52.* Section 1888 of the Financial Code is repealed.

1 ~~SEC. 46.~~
2 SEC. 53. Section 1889 of the Financial Code is repealed.
3 ~~SEC. 47.~~
4 SEC. 54. Section 1890 of the Financial Code is repealed.
5 ~~SEC. 48.~~
6 SEC. 55. Section 1891 of the Financial Code is repealed.
7 ~~SEC. 49.~~
8 SEC. 56. Section 1892 of the Financial Code is repealed.
9 ~~SEC. 50.~~
10 SEC. 57. Section 1893 of the Financial Code is repealed.
11 ~~SEC. 51.~~
12 SEC. 58. Section 1910 of the Financial Code is repealed.
13 ~~SEC. 52.~~
14 SEC. 59. Section 1911 of the Financial Code is repealed.
15 ~~SEC. 53.~~
16 SEC. 60. Section 1911.5 of the Financial Code is repealed.
17 ~~SEC. 54.~~
18 SEC. 61. Section 1912 of the Financial Code is repealed.
19 ~~SEC. 55.~~
20 SEC. 62. Section 1913 of the Financial Code is repealed.
21 ~~SEC. 56.~~
22 SEC. 63. Section 1913.5 of the Financial Code is repealed.
23 ~~SEC. 57.~~
24 SEC. 64. Section 1951 of the Financial Code is repealed.
25 ~~SEC. 58.~~
26 SEC. 65. Section 1952 of the Financial Code is repealed.
27 ~~SEC. 59.~~
28 SEC. 66. Chapter 17 (commencing with Section 3100) of
29 Division 1 of the Financial Code is repealed.
30 SEC. 67. *Section 3828 is added to the Financial Code, to read:*
31 3828. *Notwithstanding Section 3824, a foreign (other state)*
32 *bank that does not maintain offices in California may merge with*
33 *or purchase the whole business unit of a foreign (other state) bank*
34 *that already maintains one or more offices in California in*
35 *accordance with Section 3824 pursuant to federal law and the law*
36 *of the domicile of the surviving or purchasing bank. The surviving*
37 *or purchasing bank may retain the offices established in this state*
38 *by the disappearing or selling bank. Thereafter, the surviving or*
39 *purchasing bank may establish and maintain additional offices as*
40 *if it were the disappearing or selling bank.*

- 1 ~~SEC. 60.~~
2 *SEC. 68.* Section 14200 of the Financial Code is repealed.
3 ~~SEC. 61.~~
4 *SEC. 69.* Section 14200.1 of the Financial Code is repealed.
5 ~~SEC. 62.~~
6 *SEC. 70.* Section 14200.2 of the Financial Code is repealed.
7 ~~SEC. 63.~~
8 *SEC. 71.* Section 14201 of the Financial Code is repealed.
9 ~~SEC. 64.~~
10 *SEC. 72.* Section 14204 of the Financial Code is repealed.
11 ~~SEC. 65.~~
12 *SEC. 73.* Section 14205 of the Financial Code is repealed.
13 ~~SEC. 66.~~
14 *SEC. 74.* Section 14208 of the Financial Code is repealed.
15 ~~SEC. 67.~~
16 *SEC. 75.* Section 14209 of the Financial Code is repealed.
17 ~~SEC. 68.~~
18 *SEC. 76.* Section 14253 of the Financial Code is repealed.
19 ~~SEC. 69.~~
20 *SEC. 77.* Section 14255 of the Financial Code is repealed.
21 ~~SEC. 70.~~
22 *SEC. 78.* Section 14257 of the Financial Code is repealed.
23 ~~SEC. 71.~~
24 *SEC. 79.* Article 3 (commencing with Section 14300) of
25 Chapter 3 of Division 5 of the Financial Code is repealed.
26 ~~SEC. 72.~~
27 *SEC. 80.* Article 5 (commencing with Section 14380) of
28 Chapter 3 of Division 5 of the Financial Code is repealed.
29 ~~SEC. 73.~~
30 *SEC. 81.* Chapter 11 (commencing with Section 31700) of
31 Division 15 of the Financial Code is repealed.
32 ~~SEC. 74.~~
33 *SEC. 82.* Section 34100 of the Financial Code is repealed.
34 ~~SEC. 75.~~
35 *SEC. 83.* Section 34100.5 of the Financial Code is repealed.
36 ~~SEC. 76.~~
37 *SEC. 84.* Section 34101 of the Financial Code is repealed.
38 ~~SEC. 77.~~
39 *SEC. 85.* Section 34102 of the Financial Code is repealed.

- 1 ~~SEC. 78.~~
- 2 *SEC. 86.* Section 34103 of the Financial Code is repealed.
- 3 ~~SEC. 79.~~
- 4 *SEC. 87.* Section 34104 of the Financial Code is repealed.
- 5 ~~SEC. 80.~~
- 6 *SEC. 88.* Section 34105 of the Financial Code is repealed.
- 7 ~~SEC. 81.~~
- 8 *SEC. 89.* Section 34106 of the Financial Code is repealed.
- 9 ~~SEC. 82.~~
- 10 *SEC. 90.* Section 34107 of the Financial Code is repealed.
- 11 ~~SEC. 83.~~
- 12 *SEC. 91.* Section 34108 of the Financial Code is repealed.
- 13 ~~SEC. 84.~~
- 14 *SEC. 92.* Section 34109 of the Financial Code is repealed.
- 15 ~~SEC. 85.~~
- 16 *SEC. 93.* Section 34110 of the Financial Code is repealed.
- 17 ~~SEC. 86.~~
- 18 *SEC. 94.* Section 34111 of the Financial Code is repealed.
- 19 ~~SEC. 87.~~
- 20 *SEC. 95.* Section 34112 of the Financial Code is repealed.
- 21 ~~SEC. 88.~~
- 22 *SEC. 96.* Section 34113 of the Financial Code is repealed.